

RETURN DATE:	NOVEMBER 19, 2019	:	SUPERIOR COURT
IN RE:	PROBATE APPEAL OF	:	JUDICIAL DISTRICT OF
	CAROL LEVESQUE	:	MIDDLESEX AT MIDDLETOWN
		:	OCTOBER 28, 2019

COMPLAINT -APPEAL FROM PROBATE

Introduction

1. This complaint is brought pursuant to General Statutes §45a-186, appealing a decision of the Middletown Probate Court dated September 27, 2019. The decree grants authority to The Institute of Living to administer electroshock to Carol Levesque, the appellant, against her will pursuant to General Statutes §17a-543(c). The decree authorizing shock treatment is attached as Exhibit 1.
2. Ms. Levesque has 30 days to appeal the Probate Court order pursuant to General Statutes §45a-186(a), therefore this appeal is timely filed.
3. This appeal involves a hearing that was on the record and the appeal is confined to the Probate Court record pursuant to General Statutes §45a-186a(c) and §45a-186(a), and is not a trial de novo.
4. Ms. Levesque is currently inpatient at Connecticut Valley Hospital, and mailed, through undersigned counsel, an emergency motion for stay with Middletown Probate Court pursuant to Conn. Gen. Stat. section 45a-186(g) on October 28, 2019.

Reason for the Appeal

5. Connecticut law requires hospitals to exhaust less intrusive treatments before resorting to forced shock therapy. Conn. Gen. Statute section 17a-543(c) provides:

No psychosurgery or shock therapy shall be administered to any patient without the patient's written informed consent ... Such consent shall be for a maximum period of thirty days and may be revoked at any time. **If** it is determined by the head of the hospital and two qualified physicians that the patient has become incapable of giving informed consent, shock therapy may be administered upon order of the Probate Court **if**, after hearing, such court finds that the patient is incapable of informed consent **and** there is no other, less intrusive beneficial treatment. (Emphasis added).

6. Upon information and belief, the record will show medical testimony from Connecticut Valley Hospital from the hearing on September 27, 2019, regarding: a) Ms. Levesque's inability to provide informed consent, and b) the lack of less intrusive, beneficial treatments.
7. Upon information and belief, there was no medical expert testimony on behalf of Carol Levesque at the hearing at issue in this appeal because a) she cannot afford to hire an expert, and 2) her court-appointed attorney did not present her with that option.
8. Upon information and belief, Carol Levesque has received involuntary shock on a regular basis since approximately 2015.
9. Upon information and belief, the inpatient team at Connecticut Valley Hospital has not explored all other, less intrusive beneficial treatments.
10. Ms. Levesque is aggrieved because she has been shocked approximately 500 times, but remains hospitalized.

11. Ms. Levesque is aggrieved because she would have been discharged if the forced shock were “beneficial” as required by statute. However, Ms. Levesque remains on a locked unit despite 500 shocks, with the hospital pursuing more shock rather than pursuing beneficial treatments that could lead to discharge.
12. Ms. Levesque is aggrieved because she endures serial probate hearings, sometimes every 45-days, leading to forced shock instead of the pursuit of treatments that could lead to her discharge to the community.
13. Ms. Levesque is aggrieved because she endures a constant fear of shock while being deprived of her constitutional right to due process that includes a substituted decision maker as outlined for involuntary medication in Conn. Gen. Stat. section 17a-543(e).
14. Ms. Levesque is aggrieved because while there should be greater due process protections governing forced shock, there are, in fact, fewer protections including the absence of a substituted, or surrogate, decision maker. This results in a complete lack of informed consent for shock cases.
15. Ms. Levesque is similarly situated to people in inpatient settings facing forced medication, but she does not have the benefit of a substituted, or surrogate, decision maker.
16. Ms. Levesque is aggrieved because she believes a reasonable substituted decision maker would conclude that shock is not beneficial if 500 shock treatments did not lead to her discharge to the community.

17. Ms. Levesque is aggrieved because although her inpatient team asserts she is not capable of informed consent for shock, the inpatient team provides medication to her without a probate order, suggesting she is capable of informed consent.
18. If Ms. Levesque is capable of informed consent, the hospital requires her written informed consent to pursue shock treatment. Ms. Levesque has not provided written or verbal consent to shock, and she wishes to avoid any further shock at The Institute of Living.
19. Ms. Levesque is aggrieved because she has been subjected to shock against her will for approximately 5 years, and she fears losing more of her memory.
20. Ms. Levesque is aggrieved because there is no automatic stay of the probate decision. This deprives her of a meaningful opportunity to appeal that order because she will continue to endure forced shock pending her appeal unless her stay is granted.
21. Ms. Levesque's substantial rights were prejudiced because the decision to approve the hospital's request for forced shock is in violation of the general statutes, in excess of the statutory authority of the Court of Probate, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and/ or arbitrary or capricious or characterized by abuse of discretion. (Conn. Gen. Statutes §45a-186b)

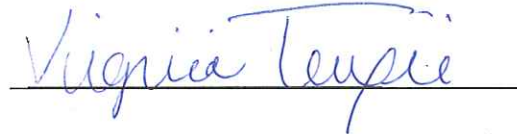
22. Ms. Levesque's substantial rights have been prejudiced because the decision to approve the hospital's request for forced shock treatment is in violation of the Fourteenth Amendment of the United States Constitution which guarantees the right to be free of unwanted medical treatment.
23. The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty or property, without due process of law." The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions." *Cruzan by Cruzan v. Director of Missouri Dept. of Health*, 497 U.S. 261, 278 (1990).
24. "An incompetent person is not able to make an informed and voluntary choice to exercise a hypothetical right to refuse treatment ... Such a "right" must be exercised for [them], if at all, by some sort of surrogate." *Cruzan by Cruzan v. Director of Missouri Dept. of Health*, 497 U.S. 261, 280 (1990).
25. Conn. Gen. Statutes §17a-543(c) does not provide a substituted decision maker regarding shock if the respondent is found to be incapable of giving informed consent.
26. In the absence of capacity, substituted decision makers ordinarily must follow the expressed wishes of the individual.

Prayer for Relief

Wherefore, Carol Levesque asks this Court to sustain her appeal. She appeals the order of Probate Court granting authority to The Institute of Living to force her to undergo shock against her will. Ms. Levesque requests a full review of the decision in accordance with law, and a stay of the Middletown Probate Court's order until a final decision and all appeals are exhausted.

CAROL LEVESQUE

BY:



HER ATTORNEY

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COURT OF PROBATE Middletown Probate Court

DISTRICT NO. PD15

IN THE MATTER OF

Carol Levesque (15-00245)

FACILITY WHERE PATIENT IS HOSPITALIZED: *[Name and address]*

Connecticut Valley Hospital, Battell Hall
144 Holmes Drive
P.O. Box 351
Middletown, CT 06457-3947

FACILITY ADMINISTERING SHOCK THERAPY: *[Name and address]*

The Institute of Living
200 Retreat Avenue
Hartford, CT 06106

SHOCK THERAPY REQUESTED

At a court of probate held at the place and time of hearing set by the court, together with any continuances thereof, as of record appears, on the petition for an order authorizing the administration of shock therapy for the treatment of the patient's psychiatric disabilities, as in the petition on file more fully appears.

Presiding Judge: Hon. Joseph D. Marino

After due hearing, THE COURT FINDS that: notice hereof was given in accordance with the order(s) of notice previously entered; that the patient is hospitalized at the above facility for the diagnosis, observation or treatment of psychiatric disabilities; that the patient is within the jurisdiction of this court for the purposes of this proceeding and that the patient is represented by counsel.

THE COURT FURTHER FINDS that:

The head of the facility and two qualified physicians have established that the patient is incapable of giving informed consent to the shock therapy requested; the shock therapy is necessary for the treatment of the patient's psychiatric disabilities; and there is no other less intrusive beneficial treatment.

WHEREFORE, it is ORDERED AND DECREED that:

Authority to administer the requested shock therapy is granted. The authorization shall be effective for no more than 45 days from the date of this decree

Dated at Middletown, Connecticut, on September 27th, 2019.


Joseph D. Marino, Judge

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed or delivered on 09/27/19 to each party and attorney of record, as follows:

Name and Address

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Soyna Lee-Kelly, M.D., CVH, P.O. Box 351, Middletown, CT 06457

Lakisha Hyatt, MSN, ACTING CEO, Connecticut Valley Hospital, Battell Hall, 144 Holmes Drive, P.O. Box 351, Middletown, CT 06457-3947

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Superintendent, Institute of Living, 200 Retreat Avenue, Hartford, CT 06106

Carol Levesque, CVH, Battell 3 South, P.O. Box 351, Middletown, CT 06457


Mary Bain, Clerk